

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DAMIEN PHILLIPS,

Case No. 2:23-cv-00599-ART-BNW

V.

Petitioner,

## ORDER

NEVADA DEPARTMENT OF  
CORRECTIONS,

## Respondents.

Following the Notice of Appearance (ECF Nos. 17, 18) by the Federal Public Defender on behalf of Petitioner Damien Phillips, it is hereby ordered:

1. Petitioner's Motion to Request Minute Order (ECF No. 7), Motions to Request Action (ECF Nos. 9, 13, 16), Motion for Correction (ECF No. 14), Motion to Request Court Order (ECF No. 19), Motion to Amend (ECF No. 20), and Motion for Appointment of Stand-In Counsel (ECF No. 21) are denied as moot.
  2. The Federal Public Defender, through Laura Angeline Barrera, Esq. and Jonathan M. Kirshbaum, Esq., is appointed as counsel for Petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent Petitioner in all federal proceedings related to this matter, including any appeals or certiorari proceedings, unless allowed to withdraw.
  3. Petitioner will have 90 days from entry of this order to file an amended petition and/or seek other appropriate relief. This deadline and any extension thereof may not be construed as implied findings regarding the federal limitation period or a basis for tolling. Petitioner at all times remains responsible for calculating the running of the federal limitation period and timely asserting claims, without regard to any court-ordered deadlines or

1 extensions. Thus, a petition or amended petition filed within a court-  
2 ordered deadline may still be dismissed as untimely if it violates the statute  
3 of limitations. *See Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

4 4. Respondents must file a response to the amended petition, including  
5 potentially by motion to dismiss, within 60 days of service of an amended  
6 petition. Petitioner may file a reply within 30 days of service of the answer.

7 However, Local Rule LR 7-2(b) governs the response and reply time to any  
8 motion filed by either party, including motions filed in lieu of a pleading.

9 5. Any procedural defenses Respondents raise to the counseled amended  
10 petition must be raised together in a single, consolidated motion to dismiss.

11 Successive motions to dismiss will not be entertained, and any procedural  
12 defenses omitted from the consolidated motion to dismiss will be waived.

13 Respondents may not file a response that consolidates their procedural  
14 defenses, if any, with their response on the merits. But arguments that an  
15 unexhausted claim clearly lacks merit may be included a procedural-  
16 defense response. If Respondents seek dismissal of unexhausted claims  
17 under 28 U.S.C. § 2254(b)(2) they must: (1) do so in a single motion to  
18 dismiss, not in the answer; and (2) specifically direct their argument to the

19 standard for dismissal under § 2254(b)(2) as set forth in *Cassett v. Stewart*,  
20 406 F.3d 614, 623–24 (9th Cir. 2005). In short, no procedural defenses,  
21 including exhaustion, may be included with the merits in an answer. All  
22 procedural defenses, including exhaustion, must be raised in a single  
23 motion to dismiss.

24 6. In any answer filed on the merits, Respondents must specifically cite to and  
25 address the applicable state court written decision and state court record  
26 materials, if any, regarding each claim within the response as to that claim.

27 7. Respondents must file the state court exhibits relevant to their response in  
28 chronological order.

- 1       8. All state court records and related exhibits must be filed in accordance with  
2       LR IA 10-3 and LR IC 2-2 and include a separate index identifying each  
3       exhibit by number or letter. The index must be filed in CM/ECF's document  
4       upload screen as the base document to receive the base docket number  
5       (e.g., ECF No. 10). Each exhibit must then be filed as "attachments" to the  
6       base document to receive a sequenced sub-docket number (e.g., Exhibit A  
7       (ECF No. 10-1), Exhibit B (ECF No. 10-2), Exhibit C (ECF No. 10-3), and so  
8       forth). If the exhibits will span more than one filing, the base document in  
9       each successive filing must be either a copy of the index or volume cover  
10      page. *See* LR IC 2-2(a)(3)(A).
- 11     9. Notwithstanding LR IC 2-2(g), paper copies of any electronically filed  
12      exhibits need not be provided to chambers or to the staff attorney, unless  
13      later directed by the court.

14

15      DATED THIS 1st day of August 2023.

16

17

18        
ANNE R. TRAUM  
UNITED STATES DISTRICT JUDGE

19

20

21

22

23

24

25

26

27

28